IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2003

CORAM

THE HON'BLE JUSTICE P.K.MISRA

W.P.NO.11286 OF 2000

T.Gurusamy ...Petitioner

-Vs-

1.The District Collector-cum-
Chairman of District level
Vigilance Committee,
Coimbatore.

2.The Asst.GeneraL MANAGER
(Appointing Authority)
Region-I,
Zonal office,
State bank of India,
Coimbatore 641 018. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari as stated within.

For Petitioner: Mr.S.Udayakumar

For Respondent No.1:Mrs.Thenmozhi Sivaperumal

For Respondent No.2: Mr.R.T.Duraisamy

:O R D E R

Heard the learned counsel appearing for the parties.

2. In this writ petition, the petitioner has prayed for quashing the order of the second respondent dated 30.6.2000 in Ref.No.AGM:1 :12:37.

3. The petitioner got the appointment on the basis of the community certificate indicating that he belongs to Konda Reddy community. Subsequently, the matter was enquired into by the District Level Vigilance Committee which found that the petitioner does not belong to such community and the community certificate was cancelled. The petitioner claims that even though he had filed an appeal before the State Level Scrutiny Committee and

the matter was brought to the notice of the second respondent bank, the petitioner was illegally terminated from service on the basis of the report of the two members District Level Vigilance Committee.

4.The petitioner has contended relying upon the decision of the Supreme Court reported in AIR 1995 SC 94 (KUMARI MADURI PATIL Vs. ADDL. COMMISSIONER, TRIBAL DEVELOPMENT)that the qu estion relating to validity of the community certificate has to be considered only by an appropriate three members committee constituted in accordance with the said decision and therefore the two members District Level Committee has no jurisdiction to cancel the community certificate.

5.This submission of the petitioner is buttressed by the Division bench decision dated 25.3.2003 in W.A.No.2969 of 2002 wherein it has been observed as follows"

"The order impugned in the writ petition cannot be sustained on more than one ground. Firstly, after the pronouncement of the Apex Court in the case of KUMARI MADHURI PATIL AND ANOTHER Vs. ADDITIONAL COMMISSIONER, TRIBAL DEVELOPMENT (1994(6) SCC 241) the genuineness of the community certificate could be gone into by a committee constitute by the State Governments consisting of three officers namely, 1.An Additional or Joint Secretary or any Officer higher in rank of the Director of the department concerned 2. The Director, Social Welfare/ Tribal Welfare/Backward Class Welfare, as the case may be, and 3. In the case of Scheduled Castes, another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case of scheduled Tribes, the Research Officer who has intimate knowledge in identifying the tribes, tribal communities, parts of groups of tribes or tribal communities. The order of the appellant bank dated 20.10.2001 cancelling the appointment of the first respondent on the basis of the order of the 2nd respondent, the District Vigilance Committee dated 31.8.2001 cancelling the community certificate of the 1st respondent is unsustainable, as the 2nd respondent committee consisting of two officers is not constituted in accordance with the directions of the Apex Court."

6.In such view of the matter, the order of termination passed by the bank cannot be sustained and it is hereby quashed.

7.The next question is as to whether the petitioner should be reinstated with backwages or not. The learned counsel appearing for the respondents has placed reliance on the Judgment dated 27.6.2003 in W.P.No.1825 of 2001 wherein it was observed that the question of reinstatement with consequential backwages would depend upon the final decision to be rendered by the State Level Scrutiny Committee and if ultimately the State Level Scrutiny Committee finds that the person belongs to Schedule Tribe Community, the order of termination shall stand quashed and the person would be entitled to all the consequential benefits, if such three member committee finds that the person does not belong to the particular community, the order of termination shall stand confirmed. However it is brought to my notice that an appeal has been filed against this decision and the matter is pending before the Division bench.

8.In normal course, when an order of termination is quashed and the employee is not at fault, the payment of backwages is the ordinary rule. In the present case, if it ultimately found that the petitioner did not belong to Kondy Reddy Community, it would be a case of getting some benefit on the basis of the false community certificate. Therefore, in my considered opinion, even if there would be a direction for reinstatement of the petitioner, the question of payment with backwages may depend upon the ultimate decision made by the State Level Scrutiny Committee.

9.Having regard to the facts and circumstances of the case, in the interest of justice, the following order is passed:

(i)The petitioner would be reinstated in service and would get his salary thereafter;

(ii) The matter relating to validity of the community certificate shall be considered by the State Level Scrutiny Committee in accordance with law by giving opportunity of hearing all the concerned parties, as expeditiously as possible preferably within a period of six months from the date of receipt of the records.
(iii)The first respondent is directed to forward all the relevant records to the State Level Scrutiny Committee within a period of four weeks from the date of receipt of the order.

(iv) If it is ultimately found that the petitioner belongs to Kondy Reddy Community, the second respondent Bank shall be obliged to pay all the arrear wages from the date of termination till the reinstatement pursuant to the present order.

(v) On the other hand, if it is found that the petitioner does not belong to Konda Reddy Community, the second respondent shall be obliged to issue fresh order of termination against the petitioner.

(Vi) The order regarding reinstatement should be carried out within a period of one month from the date of communication of the order.

The writ petition is disposed of. No costs.

Index:Yes.
Internet:Yes.

VJY

To

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